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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P.NO. 1403 OF 2002

BETWEEN

Top Chand Sahu S/o Shri Shiv Ram Sahu, aged about 44 years, occupation Lacturar , at present working on the post of Lecturar in Government Kisan Higher Secondary School Karamkara District Rajnandgaon (CG).

PETITIONER

P.R. No. 1405/02
Presented by Shri Sunil Sahu
dated 15.9.02

A N D

The State of Chhattisgarh, through the Secretary Department of School Education, D.K.S. Building Raipur.

2. The Director, Public Instructions, Raipur.

3. Commissioner, Public Instructions, Raipur.

4. District Education Officer, Rajnandgaon District Rajnandgaon.

RESPONDENTS

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

(126)

Writ Petition No. 2622 of 2001

Petitioners — Bhojraj Choudhary and others

Versus

Respondents — The State of Chhattisgarh and others

Writ Petition No. 1403 of 2002

Petitioner — Top Chand Sahu

Versus

Respondents — The State of Chhattisgarh and others

Post for order on 20th July, 2006.

Sd/-
Satish K. Agnihotri
Judge
19.7.2006

Seen
20.7.2006

HIGH COURT OF CHHATTISGARH AT BILASPUR

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Writ Petition No. 2622 of 2001

Petitioners Bhojraj Choudhary and others

Versus

Respondents The State of Chhattisgarh and others

Writ Petition No. 1403 of 2002

Petitioner Top Chand Sahu

Versus

Respondents The State of Chhattisgarh and others

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Awadh Tripathi, Advocate for the petitioners.

Smt. Anju Ahuja, Deputy Govt. Advocate for the respondents No. 1 to 4.

ORDER

(20th July, 2006)

The following order of the Court is passed by **Satish K. Agnihotri, J.**

1. Writ Petition No. 2622 of 2001 and Writ Petition No. 1403 of 2002 involve the same question of law, as to whether the petitioners being employee of a private school are entitled to absorption in service by the Government, at the time of taking over of the school by the Government. Thus, both the petitions are being decided together.

2. The facts in nutshell are as under:-

Writ Petition No. 2622 of 2001

The petitioners were employed in the Kisan Higher Secondary School, Karamkara. The petitioners No. 1 to 5 were working as Upper Division Teacher, petitioner No.6 was working as Craft Teacher, petitioner No.7 was working as Assistant Teacher (Science) and the

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petitioners No. 8 to 10 were working as Peons. The Respondent/State by letter dated 26.9.1998 (Annexure P/7) informed the Commissioner, Public Education, communicating the consent of the Government that the Government had agreed to take over the private Kisan Higher Secondary School, Karmkara, District- Rajnandgaon with the following staffing pattern:-

Serial No.	Designation	Number	Pay scale
1.	Principal	01	8000-13500
2.	Lecturer (Shiksha Karmi Grade-I)	05	1200-2000
3.	Lowe Division Clerk	01	Rs. 400/- Part-time

subject to certain terms and conditions, including that the employees working in the said school would be absorbed after screening on the basis of their qualifications, following the reservation policy. The school was accordingly, taken over by the Government w.e.f. 1.12.1998, as per the communication dated 1.1.1999 (Annexure P/8). Thereafter vide memo dated 22.7.2005 seven more posts i.e. 3 posts of Shiksha Karmi Grade-II, 1 post of Shiksha Karmi Grade-III and 3 posts of Peons, were sanctioned by the State/respondents.

Writ Petition No. 1403/2002

The petitioner was appointed as Upper Division Teacher on 2.7.1982 in Kisan Higher Secondary School, Karamkara. The said school was taken over by the Government, with the staffing pattern, as stated above. Thereafter the petitioner was promoted to the post of Lecturer on 28.7.1997. The petitioner could not be absorbed because he was not eligible for the post of either as Lecturer or as Upper Division Teacher but he was eligible for appointment on lower grade i.e. on the

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post of Lower Division Teacher. However, the petitioner could not be appointed even on the post of Lower Division Teacher on the ground of non-availability of the sanctioned post.

3. Shri Awadh Tripathi, learned counsel appearing for the petitioners, in aforementioned both the writ petitions, submitted that the Joint Director vide letter dated 27.8.1998 (Annexure P/4) addressed to the Director, Public Instructions informed that keeping in view the number of students, the school required 17 posts and presently 17 employees were working. However, the reservation was not followed fully. It was, therefore, recommended that the number of employees as per their working staffing patterns be sanctioned.

4. Learned counsel further submitted that the petitioners should be absorbed on the lower grade, if they are not eligible for the post on which they were working. Learned counsel relied on a circular dated 26.6.1995 (Annexure R/2) to the effect that Upper Division Teachers, Lecturers and other staff would be absorbed on the post held by them at the time of taking over of the institution under the Government control provided (i) he is qualified to the post held by him, (ii) and, he is receiving the prescribed scale of pay at the cadre. A person who does not fulfill the conditions laid down in sub-para (i) and (ii) above, may be absorbed in lower grade/post for which he is entitled on the strength of his qualifications and pay.

5. Learned counsel on the basis of the above stated circular submitted that the petitioners have right to be absorbed subject to the qualifications possessed by them. If the petitioners are not qualified for the post held by them, they may be absorbed in lower grade/post. Learned counsel further submitted that though the requirement of the employee in the private institution taken over by the State Government was 17, as recommended by the Joint Director, Public

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Instructions, but the Government has approved only 14 posts, as out of them, three persons were not qualified for the posts held by them. It was further submitted that the petitioner in W.P.No. 1403/2002, as per the scheme of the Government is entitled for absorption on the post of Lower Division Teacher. It was accordingly submitted that the State/Respondent be directed to sanction more posts, keeping in view the eligibility of the employees(petitioners) for their absorption as the Government is under an obligation as per the circular/memo dated 26.6.1995.

6. Smt. Anju Ahuja, learned Deputy Govt. Advocate, appearing for the respondent/State, on the contrary, contended that the petition deserved to be dismissed, firstly on the ground that the petitioners have not approached this Court within the reasonable time and as such the petition be dismissed on the ground of delay. Secondly, the creation of a post is a policy decision of the State Government, keeping in view the financial position of the State which was known to the employees working in the institution at the time of taking over of the institution. The policy decision taken by the Government does not call for any judicial review, except in case of the same being opposed to public policy or being unconstitutional. The posts were sanctioned, admittedly, on the basis of eligibility of the employees. There is no post of Lower Division Teacher, where the petitioner Shri Top Chand Sahu could be absorbed. All the employees-petitioners have been considered in the screening and for want of the required qualification they could not be absorbed. If a person is eligible for the post of Lower Division Teacher, and there is requirement of Upper Division Teacher, then the post of Lower Division Teacher cannot be created to accommodate an employee, without looking into the requirement of the school. The circular dated 26.6.1995, relied on by learned counsel

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for the petitioner does not prescribe that all the employees of the institution, who have been taken over, would be absorbed in Government service. The circular provides for the guidelines to absorb only those employees who are eligible for the post held by them and in case there is vacancy in the lower grade, the employee can be considered for absorption in the lower grade post.

7. Having heard learned counsel for the parties and having perused the records appended to the petition and return, it is evident that the circular dated 26.6.1995 provides for absorption of those employees who are eligible on the post held by them at the time of taking over of the institution. The absorption to the lower grade/post on the basis of the eligibility depends on the requirement and availability of the post and it is not the condition to absorb each and every employee. Even if they do not have the required qualification for the post, the State Government has considered the cases of all the 17 employees for absorption and in the screening only 14 persons were found eligible for appointment on various posts. Remaining three could not be found eligible for the posts held by them and they could further not be absorbed on lower grade/post on account of non-availability of the posts.

8. The Supreme Court in the case of **Union of India and others Vs. Tejram Parashramji Bombhate and others** { (1991) 3 SCC 11}, wherein the question of law involved was, whether the Central Government can be directed to create sufficient number of posts for regularizing the services on regular basis, the Supreme Court has observed in para 4, as under:-

> *"4. .....The Central Government has taken a decision that it will not involve itself in sanctioning or running classes beyond the Primary School level. It is a policy matter involving*

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financial burden. No court or the tribunal could compel the government to change its policy involving expenditure. The Tribunal therefore, could not have issued the directions as it did to compel the Central Government to assess the needs of the school and create the necessary posts without support of law."

9. The Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Umadevi (3) and others** { (2006) 4 SCC 1} in para 43 observed, as under:

"43. .....The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

10. It is well settled principles of law that the Government cannot be directed to create a post which may disturb the financial status of the Government, whereby funds are allocated to various departments for various purposes. Even otherwise, at this stage the State Government cannot be directed to create posts to accommodate the petitioners, who could not be absorbed by the Government on taking over the school/institution as per their qualification when the said posts may not be required by the institution. There are total 11 petitioners in both the petitions, out of whom, some have been absorbed on account of further sanction of posts, subsequently, vide order dated 22.7.2005. The remaining petitioners, who could not be absorbed on account of the reasons stated-above, have no right to be absorbed under the circular dated 26.6.1995 and the order dated 1.1.1999, taking over the institution.

11. For the reasons stated above, the petitions fail and are accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur